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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke
Probation Against:

Case No. 2000-216

PETITION TO REVOKE PROBATION

13 **JOHN TIMOTHY JOHNSTON**
14 **2604 Hollister Street**
15 **P.O. Box 1144**
Simi Valley, CA 93062

16 **Registered Nurse License No. 493843**

17 Respondent.

18
19 Louise R. Bailey, M.Ed., RN (Complainant) alleges:

20 **PARTIES**

21 1. Complainant brings this Petition to Revoke Probation solely in her official capacity as
22 the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer
23 Affairs.

24 2. On or about August 31, 1993, the Board of Registered Nursing issued Registered
25 Nurse License Number 493843 to John Timothy Johnston (Respondent). The Registered Nurse
26 License was in effect at all times relevant to the charges brought herein and will expire on
27 November 30, 2010, unless renewed.

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1 **Prior Discipline**

2 3. In a disciplinary action entitled "In the Matter of Accusation and Petition to Revoke
3 Probation Against John Timothy Johnston," Case No. 2000-216, the Board of Registered
4 Nursing, issued a decision, effective June 27, 2008, in which Respondent's Registered Nurse
5 License was revoked. However, the revocation was stayed and Respondent's license was placed
6 on probation for a period of three (3) years with certain terms and conditions. A copy of that
7 decision is attached as **Exhibit A** and is incorporated by reference.

8 **JURISDICTION**

9 4. This Petition to Revoke Probation is brought before the Board of Registered Nursing
10 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
11 references are to the Business and Professions Code unless otherwise indicated. Code Section
12 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee
13 holding a temporary or an inactive license, for any reason provided in Article 3 (commencing
14 with section 2750) of the Nursing Practice Act.

15 1. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
16 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
17 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
18 subdivision (b), the Board may renew an expired license at any time within eight years after the
19 expiration.

20 **STATUTORY PROVISIONS**

21 2. Section 2761 of the Code states:

22 The board may take disciplinary action against a certified or licensed
23 nurse or deny an application for a certificate or license for any of the following:

24 (a) Unprofessional conduct, which includes, but is not limited to, the
25 following. . .

26 3. Section 118, subdivision (b), of the Code provides that the suspension/expiration/
27 surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to
28 proceed with a disciplinary action during the period within which the license may be renewed,
restored, reissued or reinstated.

1 **COST RECOVERY**

2 4. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE TO REVOKE PROBATION**

7 **(Failure to Submit Narrative of the Required Physical Examination)**

8 5. At all times after the effective date of Respondent's probation, Condition 14 stated:

9 Within 45 days of the effective date of this decision, Respondent¹, at his
10 expense, shall have a licensed physician, nurse practitioner, or physician assistant,
11 who is approved by the Board before the assessment is performed, submit an
12 assessment of the Respondent's physical condition and capability to perform the
13 duties of a registered nurse. Such an assessment shall be submitted in a format
14 acceptable to the Board. If medically determined, a recommended treatment program
15 will be instituted and followed by the Respondent with the physician, nurse
16 practitioner, or physician assistant providing written reports to the Board on forms
17 provided by the Board.

18 If Respondent is determined to be unable to practice safely as a registered
19 nurse, the licensed physician, nurse practitioner, or physician assistant making this
20 determination shall immediately notify the Board and Respondent by telephone, and
21 the Board shall request that the Attorney General's Office prepare an accusation or
22 petition to revoke probation. Respondent shall immediately cease practice and shall
23 not resume practice until notified by the Board. During this period of suspension,
24 Respondent shall not engage in any practice for which a license issued by the board is
25 required until the board has notified respondent that a medical determination permits
26 respondent to resume practice. This period of suspension will not apply to the
27 reduction of this probationary time period.

28 If Respondent fails to have the above assessment submitted to the Board
within the 45-day requirement, Respondent shall immediately cease practice and shall
not resume practice until notified by the Board. This period of suspension will not
apply to the reduction of this probationary time period. The Board may waive or
postpone this suspension only if significant, documented evidence of mitigation is
provided. Such evidence must establish good faith efforts by the respondent to obtain
the assessment, and a specific date for compliance must be provided. Only one such
waiver or extension may be permitted.

6. Respondent's probation is subject to revocation because he failed to comply with
Probation Condition 14, referenced above. The facts and circumstances regarding this violation

¹ All references in the Order to "petitioner" which are quoted in this Petition have been
changed to "Respondent".

are that Respondent failed to complete a physical examination and failed to submit a narrative of the physical examination by the due date as required.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Participate in Treatment/Rehabilitation Program for Chemical Dependency)

7. At all times after the effective date of Respondent's probation, Condition 15 stated:

Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the board shall consider Respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above. The facts and circumstances regarding this violation are that Respondent failed to provide evidence of attending the required 12-step and nurse support group meetings.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Submit to Tests and Samples)

9. At all times after the effective date of Respondent's probation, Condition 17 stated:

Respondent, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall

1 fully cooperate with the Board or its representatives, and shall, when requested,
2 submit to such tests and samples as the Board or its representatives may require for
the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled
substances.

3 If Respondent has a positive drug screen for any substance not legally
4 authorized and not reported to the coordinating physician, nurse practitioner or
physician assistant, and the Board files a petition to revoke probation or an
5 accusation, the Board may suspend Respondent from practice pending the final
decision on the petition to revoke probation or the accusation. This period of
6 suspension will not apply to the reduction of this probationary period.

7 If Respondent fails to participate in a random, biological fluid testing or
drug screening program within the specified time frame, the Respondent shall
8 immediately cease practice and shall not resume practice until notified by the Board.
After taking into account documented evidence of mitigation, if the board files a
9 petition to revoke probation or an accusation, the Board may suspend Respondent
from practice pending the final decision on the petition to revoke probation or the
10 accusation. This period of suspension will not apply to the reduction of this
probationary time period.

11 10. Respondent's probation is subject to revocation because he failed to comply with
12 Probation Condition 17, referenced above. The facts and circumstances regarding this violation
13 are that Respondent failed to sign up with Compass Vision for random drug testing.

14 **FOURTH CAUSE TO REVOKE PROBATION**

15 **(Failure to Submit to the Required Mental Health Examination)**

16 11. At all times after the effective date of Respondent's probation, Condition 18 stated:

17 The Respondent shall, within 45 days of the effective date of this decision,
18 have a mental health examination including psychological testing as appropriate to
determine his capability to perform the duties of a registered nurse. The examination
19 will be performed by a psychiatrist, psychologist or other licensed mental health
practitioner approved by the Board. The examining mental health practitioner will
20 submit a written report of that assessment and recommendations to the Board. All
costs are the responsibility of the respondent. Recommendations for treatment,
21 therapy or counseling made as a result of the mental health examination will be
instituted and followed by the Respondent.

22 If Respondent is determined to be unable to practice safely as a registered
nurse, the licensed mental health care practitioner making this determination shall
23 immediately notify the Board and Respondent by telephone, and the Board shall
request that the Attorney General's office prepare an accusation or petition to revoke
24 probation. Respondent shall immediately cease practice and may not resume practice
until notified by the Board. During this period of suspension, Respondent shall not
25 engage in any practice for which a license issued by the board is required, until the
Board has notified Respondent that a mental health determination permits respondent
26 to resume practice. This period of suspension will not apply to the reduction of this
probationary time period.

27 If the Respondent fails to have the above assessment submitted to the
28 board within the 45-day requirement, Respondent shall immediately cease practice

1 and shall not resume practice until notified by the Board. This period of suspension
2 will not apply to the reduction of this probationary time period. The Board may
3 waive or postpone this suspension only if significant, documented evidence of
mitigation is provided. Such evidence must establish good faith efforts by the
Respondent to obtain the assessment, and a specific date for compliance must be
provided. Only one such waiver or extension may be permitted.

4 12. Respondent's probation is subject to revocation because he failed to comply with
5 Probation Condition 18, referenced above. The facts and circumstances regarding this violation
6 are that Respondent failed to complete a mental health examination by the due date as required.

7 **FIFTH CAUSE TO REVOKE PROBATION**

8 **(Failure to Participate in On-Going Therapy or Counseling)**

9 13. At all times after the effective date of Respondent's probation, Condition 19 stated:

10 Respondent, at his expense, shall participate in an on-going counseling
11 program until such time as the Board releases him from the requirement and only
upon the recommendation of the counselor. Written progress reports from the
counselor will be required at various intervals.

12 14. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 19, referenced above. The facts and circumstances regarding this violation
14 are that Respondent failed to participate in an on-going therapy or counseling program.

15 **SIXTH CAUSE TO REVOKE PROBATION**

16 **(Failure to Comply with Probation Program)**

17 15. At all times after the effective date of Respondent's probation, Condition 2 stated, in
18 part:

19 Respondent shall fully comply with the terms and conditions of the
20 Probation Program established by the Board and cooperate with representatives of the
21 Board in its monitoring and investigation of the Respondent's compliance with the
22 Board's Probation Program. Respondent shall inform the Board in writing within no
more than 15 days of any address change and shall at all times maintain an active,
current license status with the Board, including during any period of suspension.

23 16. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
25 are that Respondent failed to comply with the Board's Probation Program, as set forth in
26 paragraphs 5 through 14, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2000-216 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No: 493843 issued to John Timothy Johnston;
2. Revoking or suspending Registered Nurse License No. 493843, issued to John Timothy Johnston; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09


Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2009603444
pet revoke prob.rtf

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

JOHN T. JOHNSTON

Registered Nurse License No. 493843

Petitioner.

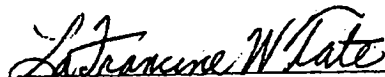
OAH No. L2008030839

DECISION

The attached Decision of the Board of Registered Nursing is hereby adopted by the Board
as its Decision in the above-entitled matter.

This Decision shall become effective on June 27, 2008.

IT IS SO ORDERED this 29th day of May 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

JOHN T. JOHNSTON
1186 Appleton Road
Simi Valley, CA 93065

Petitioner

Case No. 2000-216

OAH No. 2008030839

DECISION

On April 17, 2008, in San Diego, California, a quorum of the Board of Registered Nursing of the State of California, comprised of LaFrancine Tate, Carmen Morales-Board, R.N., Nancy L. Beecham, R.N.C., B.S., Susanne J. Phillips, R.N., Elizabeth O. Dietz, Ed. R.N., and Janice Glabb, with Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, presiding, heard this matter.

T. Michelle Laird, Deputy Attorney General, represented the Attorney General.

Petitioner represented himself.

The matter was submitted on April 17, 2008.

FACTUAL FINDINGS

1. On October 11, 2007 and February 25, 2008, petitioner signed a Petition for Reinstatement or Reduction of Penalty and submitted it to the Board of Registered Nursing of the State of California (hereafter, "Board"). Petitioner seeks reinstatement of a surrendered license.
2. On August 31, 1993, the Board issued license number 493843 to petitioner.
3. On June 6, 2000, the Board filed an accusation against petitioner's license for abusing drugs while on duty at Regency Health Services in Tustin, California, in 1994. An

administrative hearing was held on November 21, 2000. Due to the illness of the administrative law judge, a Proposed Decision was not rendered until July 26, 2002. In that decision, it was determined that petitioner had possessed and self-administered controlled substances in 1994. Petitioner introduced evidence of rehabilitation at the hearing, and this resulted in a decision which revoked petitioner's license, the revocation was stayed, and he was placed on probation for three years. He was also ordered to pay costs of investigation and enforcement in the amount of \$5,675.50. The Board adopted the Proposed Decision and it became effective on October 17, 2002.

On July 24, 2004, the Board filed an accusation and petition to revoke probation alleging that petitioner had failed to comply with the terms and conditions of his probation, including his failure to abstain from use of mood-altering drugs, including alcohol.

On June 16, 2005, the Board adopted a Stipulated Surrender of License and Order in which petitioner surrendered his license. One of the conditions of the Order was that if petitioner's license was to be reinstated, he was to pay costs of investigation and enforcement in the amount of \$9,252.50 to the Board. The surrender of petitioner's license became effective on July 16, 2005.

4. On May 10, 2004, petitioner checked into AANACA Program House, a structured sober living home for men in Simi Valley, and he has continued to reside there. About nine months after he arrived, he was appointed the resident manager and he has held that position ever since. Petitioner has regularly attended Alcoholics Anonymous meetings and serves as secretary for the Tuesday night meetings and a newcomers' workshop.

When petitioner first began AA, he attended up to three meetings a day. He continues to attend meetings regularly. He obtained a sponsor then, and now is a sponsor himself. Petitioner established he has been clean and sober for nearly four years.

5. Petitioner was employed by Darancare Corporation as a caregiver and as of January 4, 2008, has worked as a care giver to the elderly for Comfort Keepers. His supervisor at Darancare evaluated his performance as far above average and his supervisor at Comfort Keepers indicated he is trustworthy and responsible. In addition, petitioner has worked as a job coach, in shoe sales, in garden sales, and as a handyman in construction within the last four years.

6. John Morris is petitioner's sponsor. He testified at the hearing and described petitioner's recovery as miraculous. He testified he first found petitioner to be near death but he has taken his program seriously and will not make the same mistakes again. He believed petitioner had a good foundation upon which to stay sober and he was ready to out on his own.

LEGAL CONCLUSIONS

1. Petitioner established he was rehabilitated by reason of Findings 4 through 6.

2. Cause to grant the petition for reinstatement of a surrendered license was established. However, petitioner did not establish the license should be without restrictions. He has a lengthy history of drug abuse, but his rehabilitation has lasted only four years. Under these circumstances, a three-year period of probation is necessary to assure the public that petitioner can practice nursing in California safely.

ORDER

The application of petitioner John T. Johnston for reinstatement of licensure is hereby granted. A license shall be issued to petitioner. Said license shall immediately be revoked, the order of revocation stayed and petitioner placed on probation for a period of three (3) years on the following conditions:

(1) OBEY ALL LAWS - Petitioner shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the petitioner to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, petitioner shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If petitioner is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Petitioner shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the petitioner's compliance with the Board's Probation Program. Petitioner shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, petitioner's license shall be fully restored.

(3) REPORT IN PERSON - Petitioner, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Petitioner's probation is tolled, if and when he resides outside of California. The petitioner must provide written notice

to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Petitioner shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Petitioner shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Petitioner shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Petitioner, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to petitioner's compliance with all the conditions of the Board's Probation Program. Petitioner shall immediately execute all release of information forms as may be required by the Board or its representatives.

Petitioner shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Petitioner, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If petitioner has not complied with this condition during the probationary term, and the petitioner has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Petitioner shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Petitioner shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Petitioner shall provide a copy of this decision to his or her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, petitioner shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Petitioner shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Petitioner shall obtain prior approval from the Board regarding petitioner's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Petitioner shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Petitioner's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours petitioner works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with petitioner at least twice during each shift worked.

(d) Home Health Care - If petitioner is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with petitioner as required by the Board each work day. Petitioner shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the petitioner with or without petitioner present.

(9) EMPLOYMENT LIMITATIONS - Petitioner shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Petitioner shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Petitioner shall not work in any other registered nursing occupation where home visits are required.

Petitioner shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict petitioner from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Petitioner shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Petitioner shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the petitioner is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Petitioner, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Petitioner shall obtain prior approval from the Board before enrolling in the course(s). Petitioner shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to petitioner after photocopying them for its records.

(11) COST RECOVERY - Petitioner shall pay to the Board costs associated with its investigation and enforcement of the underlying pursuant to Business and Professions Code section 125.3 in the amount of \$9,252.50. Petitioner shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If a petitioner violates the conditions of her probation, the Board after giving the petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the petitioner's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During petitioner's term of probation, if he ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, petitioner may surrender his or her license to the Board. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, petitioner will no longer be subject to the conditions of probation.

Surrender of petitioner's license shall be considered a disciplinary action and shall become a part of petitioner's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, petitioner, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the petitioner's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the petitioner with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension,

petitioner shall not engage in any practice for which a license issued by the Board is required until the Board has notified petitioner that a medical determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE – Petitioner, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If petitioner has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, petitioner, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider petitioner in violation of probation.

Based on Board recommendation, each week petitioner shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Petitioner shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Petitioner shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS – Petitioner shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Petitioner shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, petitioner's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Petitioner shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of petitioner's history of substance abuse and will coordinate and monitor any prescriptions for petitioner for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis petitioner's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES – Petitioner, at his expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Petitioner is responsible for keeping the Board informed of her current telephone number at all times. Petitioner shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and petitioner shall be considered in violation of probation.

In addition, petitioner, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If petitioner has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If petitioner fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend petitioner from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - The petitioner shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties

of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the petitioner. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the petitioner.

If petitioner is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and petitioner by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Petitioner shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, petitioner shall not engage in any practice for which a license issued by the Board is required, until the Board has notified petitioner that a mental health determination permits petitioner to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the petitioner fails to have the above assessment submitted to the Board within the 45-day requirement, petitioner shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the petitioner to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) THERAPY OR COUNSELING PROGRAM -- Petitioner, at his expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

BOARD OF
REGISTERED NURSING
SACRAMENTO


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RECEIVED

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

This Decision shall become effective on June 27, 2008.

IT IS SO ORDERED this 29th day of May 2008.



LaFRANCINE TATE, PRESIDENT
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

JOHN TIMOTHY JOHNSTON
1701 Chatsworth Street, Apt 12
Granada Hills, CA 91344

Registered Nurse License No. 493843

Respondent

Case No. 2000-216

OAH No. L-2004 110 222

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on July 16, 2005.

IT IS SO ORDERED June.16, 2005.

Sandra R. Erickson

President
FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMI L. CANTORE, State Bar No. 165410
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2569
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke Probation
11 Against:

12 JOHN TIMOTHY JOHNSTON
1186 Appleton Road
13 Simi Valley, CA 93065

14 Registered Nurse License No. 493843

15 Respondent.

Case No. 2000-216

OAH No. L-2004 110 222

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
21 the Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jami L.
23 Cantore, Deputy Attorney General.

24 2. JOHN TIMOTHY JOHNSTON (Respondent) is representing himself in
25 this proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 31, 1993, the Board of Registered Nursing issued
27 Registered Nurse License No. 493843 to JOHN TIMOTHY JOHNSTON (Respondent). The
28 License was in full force and effect at all times relevant to the charges brought in Accusation and

1 Petition to Revoke Probation No. 2000-216. Registered Nurse License No. 493843 expired on
2 November 30, 2004, and has not been renewed.

3 JURISDICTION

4 4. Accusation and Petition to Revoke Probation No. 2000-216 was filed
5 before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is
6 currently pending against Respondent. The Accusation and Petition to Revoke Probation and all
7 other statutorily required documents were properly served on Respondent on August 11, 2004.
8 Respondent timely filed his Notice of Defense contesting the Accusation and Petition to Revoke
9 Probation. A copy of Accusation and Petition to Revoke Probation No. 2000-216 is attached as
10 Exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands the charges and allegations
13 in Accusation and Petition to Revoke Probation No. 2000-216. Respondent also has carefully
14 read and understands the effects of this Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation and Petition to Revoke
17 Probation; the right to be represented by counsel at his own expense; the right to confront and
18 cross-examine the witnesses against him; the right to present evidence and to testify on his own
19 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
20 production of documents; the right to reconsideration and court review of an adverse decision;
21 and all other rights accorded by the California Administrative Procedure Act and other applicable
22 laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
24 each and every right set forth above.

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in
27 Accusation and Petition to Revoke Probation No. 2000-216, agrees that cause exists for
28 discipline, and hereby surrenders his Registered Nurse License No. 493843 for the Board's formal

1 || formal acceptance.

2 9. Respondent understands that by signing this stipulation he enables the
3 Board to issue an order accepting the surrender of his Registered Nurse License without further
4 process.

RESERVATION

6 10. The admissions made by Respondent herein are only for the purposes of
7 this proceeding, or any other proceedings in which the Board of Registered Nursing or other
8 professional licensing agency is involved, and shall not be admissible in any other criminal or
9 civil proceeding.

CONTINGENCY

11 11. This stipulation shall be subject to approval by the Board of Registered
12 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
13 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
14 and surrender, without notice to or participation by Respondent. By signing the stipulation,
15 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind
16 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
17 this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall
18 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
19 between the parties, and the Board shall not be disqualified from further action by having
20 considered this matter.

21 12. The parties understand and agree that facsimile copies of this Stipulated
22 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
23 and effect as the originals.

24 13. In consideration of the foregoing admissions and stipulations, the parties
25 agree that the (Board) may, without further notice or formal proceeding, issue and enter the
26 following Order:

27 |||

28 |||

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 493843, issued to Respondent JOHN TIMOTHY JOHNSTON is surrendered and accepted by the Board of Registered Nursing.

14. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

15. Respondent shall lose all rights and privileges as a registered nurse in California as of the effective date of the Board's Decision and Order.

16. Respondent shall cause to be delivered to the Board both his wall license and pocket renewal license on or before the effective date of the Decision and Order.

17. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed. All of the charges and allegations contained in Accusation and Petition to Revoke Probation No. 2000-216 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

18. If and when Respondent's license is reinstated, he shall pay to the Board the costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of nine thousand two hundred fifty-two dollars and fifty cents (\$9,252.50). Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

19. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation and Petition to Revoke

1 Probation No. 2000-216 shall be deemed to be true, correct, and admitted by Respondent for the
2 purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

3 20. Respondent shall not apply for licensure or petition for reinstatement for
4 two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

5 ACCEPTANCE

6 I have carefully read the Stipulated Surrender of License and Order. I understand
7 the stipulation and the effect it will have on my Registered Nurse License. I enter into this
8 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
9 be bound by the Decision and Order of the Board of Registered Nursing.

10 DATED: 3/1/05

11
12 
13 JOHN TIMOTHY JOHNSTON (Respondent)
14 Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Surrender of License and Order is hereby respectfully
17 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
18 Affairs.

19 DATED: 3/7/05

20
21 BILL LOCKYER, Attorney General
22 of the State of California


23 
24 JAMI L. CANTORE
25 Deputy Attorney General
26 Attorneys for Complainant
27
28

Exhibit A

Petition to Revoke Probation No. 2000-216

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMI L. CANTORE, State Bar No. 165410
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2569
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant—

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

12 JOHN TIMOTHY JOHNSTON
13 1186 Appleton
Simi Valley, CA 93065
14 Registered Nursing License No. 493843

15 Respondent.

Case No. 2000-216

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation and
20 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board
21 of Registered Nursing (Board), Department of Consumer Affairs.

22 2. On or about August 31, 1993, the Board issued Registered Nursing
23 License No. 493843 to John Timothy Johnston (Respondent). The license will expire on
24 November 30, 2004, unless renewed.

25 **JURISDICTION**

26 3. This Accusation and Petition to Revoke Probation is brought before the
27 Board, under the authority of the following laws. All section references are to the Business and
28 Professions Code ("Code") unless otherwise indicated.

1 4. Section 2750 of the Code states, in pertinent part:

2 "Every certificate holder or licensee, including licensees holding temporary
3 licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided
4 in this article [article 3, commencing with section 2750]. As used in this article, 'license' includes
5 certificate, registration, or any other authorization to engage in the practice regulated by this
6 chapter [chapter 6, commencing with section 2700]."

7 5. Section 118, subdivision (b), of the Code states:

8 "The suspension, expiration, or forfeiture by operation of law of a license issued
9 by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or
10 by order of a court of law, or its surrender without the written consent of the board, shall not,
11 during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board
12 of its authority to institute or continue a disciplinary proceeding against the licensee upon any
13 ground provided by law or to enter an order suspending or revoking the license or otherwise
14 taking disciplinary action against the licensee on any such ground."

15 6. Section 2764 of the Code states:

16 "The lapsing or suspension of a license by operation of law or by order or decision
17 of the board or a court of law, or the voluntary suspension of a license by a licentiate shall not
18 deprive the board of jurisdiction to proceed with any investigation of or disciplinary proceeding
19 against such license, or to render a decision suspending or revoking such license."

20 7. Section 2811, subdivision (b), of the Code provides in pertinent part, that
21 each license not renewed in accordance with that section shall expire, but may within a period of
22 eight years thereafter be reinstated.

23 8. Section 2761 of the Code states, in pertinent part:

24 "The board may take disciplinary action against a certified or licensed nurse or
25 deny an application for a certificate or license for any of the following:

26 "(a) Unprofessional conduct . . .

27 . . .

28 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or

...ing the violating of, or conspiring to violate any provision or term of this chapter [chapter 6, commencing with section 2700] or regulations adopted pursuant to it."

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Failing to Comply with Probation)

9. Respondent is subject to disciplinary action pursuant to section 2761(d) of the Code in that Respondent violated the terms and conditions of his probation as stated below in paragraphs 12-19.

PETITION FOR REVOCATION OF PROBATION

10. In a disciplinary action entitled, "In the Matter of Accusation Against John Timothy Johnston," Case No. 2000-216, the Board of Registered Nursing issued a decision, effective October 17, 2002, in which Respondent's Registered Nursing License was revoked. However, the revocation was stayed and Respondent's Nursing License was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and incorporated herein by reference.

"(2) **COMPLY WITH THE PROBATION PROGRAM**. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

....

"(5) **SUBMIT WRITTEN REPORTS**. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

....

1 **"(8) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS.**

2 Except for his current employment as of the date of this decision, respondent shall
3 obtain prior approval from the Board before commencing any employment, paid or voluntary, as
4 a registered nurse. Respondent shall cause to be submitted to the Board all performance
5 evaluations and other employment related reports as a registered nurse upon request of the Board.

6 Respondent shall also inform the Board in writing of the name, address, and
7 telephone number of his current employer(s) and supervisor(s) within 30 days of the effective
8 date of this decision.

9 Respondent shall provide a copy of this decision to his current employer and
10 immediate supervisor. Respondent shall also provide a copy of this decision to any future
11 employer and immediate supervisor prior to commencement of any nursing or other health care
12 related employment.

13 Respondent shall notify the Board in writing within seventy-two (72) hours after
14 he obtains any nursing or other health care related employment, when such employment is not as
15 a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours
16 after he is terminated from any registered nursing, other nursing, or other health care related
17 employment with a full explanation of the circumstances surrounding the termination.

18 **"(9) SUPERVISION.** Respondent shall obtain prior approval from the Board
19 regarding respondent's level of supervision and/or collaboration before commencing any
20 employment as a registered nurse.

21 Respondent shall practice only under the direct supervision of a registered nurse
22 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
23 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
24 are approved.

25 Respondent's level of supervision and/or collaboration may include, but is not
26 limited to the following:

27 (a) Maximum - The individual providing supervision and/or collaboration is
28 present in the patient care area or in any other work setting at all times.

1 (b) Moderate - The individual providing supervision and/or collaboration is in
2 the patient care unit or in any other work setting at least half the hours respondent works.

3 (c) Minimum - The individual providing supervision and/or collaboration has
4 person-to-person communication with respondent at least twice during each shift worked.

5 (d) Home Health Care - If respondent is approved to work in the home health
6 care setting, the individual providing supervision and/or collaboration shall have person-to-
7 person communication with respondent as required by the Board each work day. Respondent
8 shall maintain telephone or other telecommunication contact with the individual providing
9 supervision and/or collaboration as required by the Board during each work day. The individual
10 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
11 site visits to patients' homes visited by the respondent with or without respondent present.

12

13 **"(13) PHYSICAL EXAMINATION.** Within 45 days of the effective date of
14 this decision, respondent, at his expense, shall have a licensed physician, nurse practitioner, or
15 physician assistant, who is approved by the Board before the assessment is performed, submit an
16 assessment of the respondent's physical condition and capability to perform the duties of a
17 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
18 medically determined, a recommended treatment program will be instituted and followed by the
19 respondent with the physician, nurse practitioner, or physician assistant providing written reports
20 to the Board on forms provided by the Board.

21 If respondent is determined to be unable to practice safely as a registered nurse,
22 the licensed physician, nurse practitioner, or physician assistant making this determination shall
23 immediately notify the Probation Program and respondent by telephone. Respondent shall
24 immediately cease practice and shall not resume practice until notified by the Probation Monitor.
25 During this period of suspension, respondent shall not engage in any practice for which a license
26 issued by the Board is required until the Probation Monitor has notified respondent that a
27 medical determination permits respondent to resume practice.

28 ///

1 **"(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM**
2 **FOR CHEMICAL DEPENDENCE.** Respondent, at his expense, shall successfully complete

3 during the probationary period or shall have successfully completed prior to commencement of
4 probation, a Board-approved treatment/rehabilitation program of at least six months. As
5 required, reports shall be submitted by the program on forms provided by the Board. If
6 respondent has not completed a Board-approved treatment/rehabilitation program prior to
7 commencement of probation, respondent, within 45 days from the effective date of the decision,
8 shall be enrolled in a program. If a program is not successfully completed within the first nine
9 months of probation, the Board shall consider respondent in violation of probation.

10 Based on Probation Program recommendation, each week respondent shall be
11 required to attend at least one, but no more than five, 12-step recovery meetings or equivalent
12 (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as
13 approved and directed by the Board. If a nurse support group is not available, an additional 12-
14 step meeting or equivalent shall be added. Respondent shall submit dated and signed
15 documentation confirming such attendance to the Board during the entire period of probation.
16 Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation
17 program or a licensed mental health examiner and/or other ongoing recovery groups.

18 **"(15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING)**
19 **DRUGS.** Respondent shall completely abstain from the possession, injection or consumption by
20 any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are
21 ordered by a health care professional legally authorized to do so and are part of documented
22 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
23 days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date
24 the medication was prescribed, the respondent's prognosis, the date the medication will no longer
25 be required, and the effect on the recovery plan, if appropriate.

26 Respondent shall identify for the Board, a single physician, nurse practitioner or
27 physician assistant who shall be aware of respondent's history of substance abuse and will
28 coordinate and monitor any prescription for respondent for dangerous drugs, controlled

1 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
2 assistant shall report to the Board on a quarterly basis respondent's compliance with this
3 condition. If any substances considered addictive have been prescribed, the report shall identify a
4 program for the time-limited use of any substances.

5 The Board may require the single coordinating physician, nurse practitioner, or
6 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
7 addictive medicine.

8 **"(16) SUBMIT TO TESTS AND SAMPLES.** Respondent, at his expense,
9 shall participate in a random, biological fluid testing or a drug-screening program, which the
10 Board approves. The length of time and frequency will be subject to approval by the Board. The
11 respondent is responsible for keeping the Board informed of respondent's current telephone
12 number at all times. Respondent shall also ensure that reports are submitted directly by the
13 testing agency to the Board, as directed. Any confirmed positive finding shall be reported
14 immediately to the Board by the program and the respondent shall be considered in violation of
15 probation.

16 In addition, respondent, at any time during the period of probation, shall fully
17 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
18 tests and samples as the Board or its representatives may require for the detection of alcohol,
19 narcotics, hypnotics, dangerous drugs, or other controlled substances.

20 If respondent has a positive drug screen for any substance not legally authorized
21 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
22 Board files a petition to revoke probation or an accusation, the Board may suspend respondent
23 from practice pending the final decision on the petition to revoke probation or the accusation.

24 **"(17) MENTAL HEALTH EXAMINATION.** The respondent shall, within 45
25 days of the effective date of this decision, have a mental health examination including
26 psychological testing as appropriate to determine his capability to perform the duties of a
27 registered nurse. The examination will be performed by a psychiatrist, psychologist or other
28 licensed mental health practitioner approved by the Board. The examining mental health

1 practitioner will submit a written report of that assessment and recommendations to the Board.
2 All costs are the responsibility of the respondent. Recommendations for treatment, therapy or
3 counseling made as a result of the mental health examination will be instituted and followed by
4 the respondent.

5 If respondent is determined to be unable to practice safely as a registered nurse,
6 the licensed mental health care practitioner making this determination shall immediately notify
7 the Probation Program and respondent by telephone. Respondent shall immediately cease
8 practice and may not resume practice until notified by the Probation Monitor. During this period
9 of suspension, respondent shall not engage in any practice for which a license issued by the
10 Board is required, until the Probation Monitor has notified respondent that a mental health
11 determination permits respondent to resume practice.

12 "(18) THERAPY OR COUNSELING PROGRAM. Respondent, at his
13 expense, shall participate in an on-going counseling program until such time as the Board
14 releases him from this requirement and only upon the recommendation of the counselor. Written
15 progress reports from the counselor will be required at various intervals.

16 "(19) SEVERABILITY CLAUSE. Each term and condition of probation
17 contained herein is a separate and distinct term and condition. If any term and condition of this
18 Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the
19 remainder of this Order, and all other applications thereof, shall not be affected. Each term and
20 condition of this Order shall separately be valid and enforceable to the fullest extent permitted by
21 law."

22 PROBATION VIOLATION

23 11. Respondent violated Condition 2 of his probation in that during the period
24 of his probation he failed to fully comply with the Probation Program for the reasons stated
25 below in paragraphs 12-19.

26 12. Respondent violated Condition 5 of his probation in that he failed to
27 submit the required Physical Health Exam report; Mental Health Exam report; support group
28 attendance forms or evidence of meeting attendance; and a letter regarding termination from his

1 RN position at Northridge Care Center.

2 13. Respondent violated Condition 8 of his probation in that he failed to notify
3 the Board in writing within seventy-two (72) hours of his termination from Northridge Care
4 Center.

5 14. Respondent violated Condition 9 of his probation in that he failed to
6 practice under the direct supervision of another RN as required. Respondent, by his own
7 admission, frequently worked without supervision at Northridge Care Center.

8 15. Respondent violated Condition 13 of his probation in that he failed to
9 complete the required Physical Health Exam in a timely manner and failed to have the narrative
10 report of the exam submitted to the Board by December 2, 2002, as required.

11 16. Respondent violated Condition 14 of his probation in that he failed to
12 complete a treatment/rehabilitation program as required, and failed to attend the required number
13 of 12-step and nurse support group meetings per week.

14 17. Respondent violated Condition 15 of his probation in that he failed to
15 abstain from the use of mood-altering drugs, including alcohol. On November 21, 2002,
16 November 6, 2003, and March 9, 2004, Respondent tested positive for alcohol. On May 22,
17 2003, Respondent self-reported his use of alcohol.

18 18. Respondent violated Condition 16 of his probation in that he failed to
19 participate in the required drug-screening program by testing positive for alcohol as stated above
20 in paragraph 11. In addition, on July 24, 2003, November 24, 2003, December 22, 2003, and
21 January 20, 2004, Respondent failed to appear for drug screening.

22 19. Respondent violated Condition 17 of his probation in that he failed to
23 complete the required Mental Health Exam in a timely manner and failed to have the narrative of
24 the exam submitted to the Board by December 2, 2002, as required.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

28 ///

- 1 1. Revoking the probation that was granted by the Board of Registered
2 Nursing in Case No. 2000-216 and imposing the disciplinary order that was stayed, thereby
3 revoking Registered Nursing No. 493843 issued to John Timothy Johnston;
4 2. Revoking or suspending Registered Nursing License No. 493843, issued to
5 John Timothy Johnston;
6 3. Taking such other and further action as deemed necessary and proper.

7 DATED: 7/24/04


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9 RUTH ANN TERRY, M.P.H., R.N.
10 Executive Officer
11 Board of Registered Nursing
12 Department of Consumer Affairs
13 State of California
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Complainant

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2000-216

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. 2000-216
JOHN TIMOTHY JOHNSTON)	
10351 Elton Avenue)	L-2000090223
Chatsworth, CA 91311)	
)	
Registered Nurse No. 493843)	
)	
Respondent.)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective October 17, 2002.

IT IS SO ORDERED September 17, 2002.

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Sandra L. Erickson

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**JOHN TIMOTHY JOHNSTON
10351 Elton Avenue
Chatsworth, California 91311**

Registered Nurse No. 493843,

Respondent.

Agency Case No. 2000-216

OAH No. L2000090223

PROPOSED DECISION

William F. Byrnes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on November 21, 2000.

Laurie Yost, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N. ("complainant" or "agency").

Respondent John Timothy Johnston appeared on his own behalf without counsel.

Administrative Law Judge Byrnes became ill shortly after the hearing in this case, and before he could issue a proposed decision. In late April 2001, it became apparent that Judge Byrnes would probably be unable to complete the proposed decision in this case.¹ As a result, complainant and respondent entered into a written stipulation to permit another administrative law judge to render a proposed decision in the case based upon the transcript of the hearing and the evidence received at the hearing. The stipulation and accompanying transmittal letter, filed on May 8, 2001, is received as Exhibit 4. The original certified transcript of the November 21, 2000 hearing is received as Exhibit 5.

¹ Judge Byrnes passed away in June of 2001.

At the outset of the hearing on November 21, 2000, complainant moved to amend paragraph 5 of the Accusation at line 6 on page 2 to change a citation to Business and Professions Code section "125.3", from Business and Professions Code section "125." Respondent did not oppose the motion and Administrative Law Judge Byrnes granted it. It is noted that the correction is consistent with the citation to Business and Professions Code section 125.3 in the Accusation at page 3, line 7.

Administrative Law Judge Byrnes left the record in this case open for 10 days following the hearing to enable the complainant to submit a certified copy of Exhibit 3. That document was submitted on November 22, 2000, and was admitted as Exhibit 3.

This case was deemed submitted on August 24, 2001, the date on which it was assigned to Administrative Law Judge Janis S. Rovner to issue a proposed decision. The administrative law judge now makes findings of facts and conclusions of law based upon oral and written evidence received at the hearing.

Complainant in this case seeks to discipline respondent Johnston's license on the grounds that he fraudulently obtained, possessed and self-administered a controlled substance without lawful authority.

FACTUAL FINDINGS

1. Complainant, Ruth Ann Terry, M.P.H., R.N., filed the Accusation, which sets forth the charges in this case, in her official capacity as Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs ("complainant" or "Board").

2. On August 31, 1993, the Board issued a license to John T. Johnston (also known as John Timothy Johnston) to practice as a registered nurse in the State of California. The license, number 493843, was in full force and effect at all times relevant to the charges in this case, and was due to expire on November 30, 2000, unless respondent renewed it. Under the authority of Business and Professions Code section 2764, the expiration of the license does not deprive the Board of jurisdiction to proceed against respondent's license in this case.

3. Both before and at the hearing, respondent readily admitted that in the summer of 1994, he illegally took Demerol and morphine from Regency Health Services, his employer at the time. Respondent took the drugs from his employer's medicine cart and falsified documents in order to hide his theft.

4. Respondent obtained the Demerol and morphine by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code § 11173(a), by diverting them from Regency Health Services for his own personal use. Demerol and morphine are controlled substances within the meaning of Division 10 (commencing with Section 11000) of the Health and Safety Code.

5. Respondent also unlawfully possessed the controlled substances in violation of Health and Safety Code § 11350.

6. Respondent then self-administered these controlled substances without legal authority to do so.

7. Respondent's employer apparently found out about respondent's theft and drug use and referred him for treatment. At some point in time not precisely established by the evidence, but after the summer of 1994, respondent enrolled in the Board's drug diversion program.

8. Initially, respondent complied with the Board's drug diversion program. Sometime in 1997, the Board terminated him from the program because he had failed to comply with its requirements. Based on respondent's testimony, it was established that the Board terminated respondent from the program because he had missed two random urine tests the program had scheduled for him to take.

9. Respondent candidly testified at the hearing in this matter and his testimony was largely credible and uncontroverted. He also cooperated with the Board's investigation of his case. The following findings of mitigation and rehabilitation are found to exist based primarily upon respondent's credible testimony.

10. Respondent used drugs for a brief time in the summer and fall of 1994, due to personal and financial stressors in his life. As of the hearing, respondent had been working as a case manager at Hospice since 1997. Hospice is a company that supplies nurses to terminally ill patients. His life is no longer unsettled and transient. He is able to support himself and work everyday. There is no evidence of any other misconduct of the same or a similar nature in respondent's past, and the misconduct occurred 6 years before the hearing.

11. Before he was terminated from the Board's diversion program, respondent had attended and completed a comprehensive chemical dependency program at Kaiser Hospital that involved attending classes all day for a two-week period of time with classes at night thereafter. He had gone to individual counseling sessions, attended a support group for two years, and attended 12-step programs, such as Alcoholics Anonymous.

12. As of the hearing date, respondent had not been involved in any formal drug rehabilitation efforts for about 2 ½ years. He no longer felt that he needed it because his life had become more stable. At the hearing, he had been drug-free for over 5-1/2 years. In his current position at Hospice, he does not administer drugs such as morphine and Demerol frequently, but there are occasions when he does have access to them.

13. Complainant incurred actual costs of investigation and enforcement of this case in the total sum of \$5,675.50, consisting of \$3,091.50 for costs of investigation and \$2584.00 for costs of prosecution. These costs are reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code §§ 2750, the Board may discipline a licensee for any reason provided in Article 3 of the Nursing Practice Act (Business and Professions Code §§ 2700, *et seq.*).

2. Pursuant to Business and Professions Code § 2764, the Board may proceed in this case even if respondent's license has expired by operation of law. If respondent's license has expired by operation of law, he may renew it at any time within eight years pursuant to Business and Professions Code §§ 2746.8 and 2811(b).

3. Cause exists to discipline respondent's license to practice as a registered nurse in California pursuant to Business and Professions Code § 2761(a) for unprofessional conduct under Business and Professions Code § 2762(a) based upon each of the acts enumerated in Factual Findings 4, 5 and 6.

4. Business and Professions Code §2759 provides that the Board may discipline respondent's license by placing it on probation. That is the appropriate course of action in this case to protect the public interest, based on the Factual Findings and the discussion that follows in paragraph 5., below.

5. Discussion. In considering all of the circumstances in this case, respondent's license should be placed on probation for a period of 3-years, rather than revoked outright. Respondent's errant conduct took place more than 6 years before the hearing. There was no patient involved and no direct demonstrable harm to the public. Respondent has had no other record of complaints or discipline involving his license. There was no evidence at the hearing that respondent's misconduct was anything other than a very brief aberration in his life. Respondent completed a chemical dependency program at Kaiser Hospital sometime between the fall of 1994 and the fall of 1997, and made further efforts at rehabilitation as set forth in Factual Finding 11.

On the other hand, while it is true that respondent had regained some stability in his life as of the hearing date, his failure to complete the Board's diversion program does raise a concern. Respondent claims that although he missed the urine tests the program had scheduled for him, he tried to notify the diversion program that he would not be reachable for awhile because he was moving and on vacation and did not have a telephone. This claim was not entirely credible and showed a lack of commitment, diligence and sincerity on respondent's part. Notwithstanding his failure to complete the diversion program, there was no proof that respondent had continued to abuse drugs after his initial misconduct in 1994 (Factual Finding 3).

Respondent's failure to pursue his rehabilitative efforts in the 2-½ years before this hearing is also troublesome. At the hearing, respondent demonstrated little understanding and insight into the reasons for his misconduct in stealing the drugs and then self-administering them. This leads to some concern that he would repeat this conduct if faced with similar problems in the future. As a registered nurse, he does and will have access to controlled substances.

Equally as compelling in concluding that it is necessary for the Board to monitor respondent during a probationary period is the fact that respondent stole the drugs from his employer in the course of his job as a nurse. Not once did respondent express regret or remorse during the hearing for his dishonest conduct. Moreover, he has never made restitution to his former employer for the theft.

In considering all of these facts, it is reasonable to place respondent on probation for 3-years subject to appropriate terms and conditions. However, some of the standard and optional probationary conditions in the Board's *Recommended Guidelines for Disciplinary Orders and Conditions of Probation* (Rev.9/99; Title 16, Cal. Code of Regulations, Section 1444.5) have not been included in the accompanying order based on the evidence of respondent's rehabilitation in Factual Findings 9 through 12 and this Discussion. If respondent currently holds a job as a registered nurse in California, he should be permitted to continue with that job absent any further wrongdoing or failure to obey laws and regulations. As a result, respondent is not required to obtain the Board's approval for continued employment in his current job (Standard Condition (7)) or be excluded from his current employment (Standard Condition (9)). These conditions are modified accordingly in the accompanying order. In addition, there is no evidence to support the inclusion of Standard Condition (10) (nursing course) or Optional Condition (19) (suspension). Those conditions would serve little purpose in this case.

6. Pursuant to Business and Professions Code §125.3, respondent shall pay the actual and reasonable costs of investigation and prosecution in this case of \$5,675.50, as set forth in Finding 13.

ORDER

Registered Nurse License No. 493843 issued to respondent John T. Johnston is revoked; provided, however, the revocation is stayed for a period of three years on the following terms and conditions:

- (1) **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall submit a recent 2" X 2" photograph of himself within 45 days of the effective date of the final decision.
- (2) **COMPLY WITH PROBATION PROGRAM.** Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.
- (3) **REPORT IN PERSON.** Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.
- (4) **RESIDENCY OR PRACTICE OUTSIDE OF STATE.** Periods of residency or practice as a registered nurse outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.
- (5) **SUBMIT WRITTEN REPORTS.** Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
- (6) **PROVIDE DECISION.** Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(7) FUNCTION AS A REGISTERED NURSE. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition.

(8) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS. Except for his current employment as of the date of this decision, respondent shall obtain prior approval from the Board before commencing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall also inform the Board in writing of the name, address, and telephone number of his current employer(s) and supervisor(s) within 30 days of the effective date of this decision.

Respondent shall provide a copy of this decision to his current employer and immediate supervisor. Respondent shall also provide a copy of this decision to any future employer and immediate supervisor prior to commencement of any nursing or other health care related employment.

Respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment, when such employment is not as a registered nurse. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated from any registered nursing, other nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination.

(9) SUPERVISION. Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing any employment as a registered nurse.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) **Maximum** - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) **Moderate** - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) **Minimum** - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) **Home Health Care** - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(10) EMPLOYMENT LIMITATIONS. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

The above provisions of this condition (10) do not apply to respondent's current employment as the date of this decision, but shall apply to any new employment or new job assignment with his current employer as of the date of this decision.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(11) **COST RECOVERY.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$ 5,675.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

(12) **VIOLATION OF PROBATION.** If respondent violates the conditions of his probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

(13) **PHYSICAL EXAMINATION.** Within 45 days of the effective date of this decision, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be

submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified respondent that a medical determination permits respondent to resume practice.

(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE. Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation, a Board-approved treatment/rehabilitation program of at least six months. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Probation Program recommendation, each week respondent shall be required to attend at least one, but no more than five, 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so and are part of documented medical treatment. Respondent

shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board, a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(16) SUBMIT TO TESTS AND SAMPLES. Respondent, at his expense, shall participate in a random, biological fluid testing or a drug-screening program, which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

(17) MENTAL HEALTH EXAMINATION. The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The

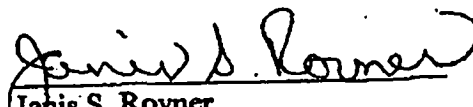
examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent by telephone. Respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to resume practice.

(18) **THERAPY OR COUNSELING PROGRAM.** Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(19) **SEVERABILITY CLAUSE.** Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Dated: July 26, 2002


Janis S. Rovner
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 LORRIE M. YOST, State Bar No. 119088
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2000-216

12 JOHN TIMOTHY JOHNSTON
10351 Elton Avenue
13 Chatsworth, California 91311

A C C U S A T I O N

14 Registered Nurse No. 493843

15 Respondent

16

17 Ruth Ann Terry, M.P.H., R.N., for causes for discipline alleges:

18 1. Complainant Ruth Ann Terry, M.P.H., R.N. makes and files this accusation in
19 her official capacity as Executive Officer, Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about August 31, 1993, the Board of Registered Nursing issued
22 Registered Nurse License No. 493843 to John Timothy Johnston (hereinafter "Respondent").
23 The Registered Nurse license was in full force and effect at all times relevant to the charges
24 brought herein, and will expire on November 30, 2000, unless renewed.

25 3. Under Business and Professions Code section 2750, the Board of
26 Registered Nursing may discipline any licensee, including a licensee holding a temporary or an
27 inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

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1 4. Under Business and Professions Code section 2764, the expiration of a license
2 shall not deprive the Board of Registered Nursing of jurisdiction to proceed with a disciplinary
3 proceeding against the licensee or to render a decision imposing discipline on the license. Under
4 Code sections 2746.8 and 2811(b), the Board may renew an expired license at any time within
5 eight years after the expiration.

6 5. Under Business and Professions Code section 125., the Board of Registered
7 Nursing may request the administrative law judge to direct a licentiate found to have committed
8 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of
9 the investigation and enforcement of the case.

10 6. DRUGS

11 "Demerol," a brand of meperidine hydrochloride, a derivative of mepethidine, is a
12 Schedule II controlled substance as designated by Health and Safety Code section 11055(c)(16).

13 "Morphine sulfate" is a Schedule II controlled substance as designated by Health
14 and Safety Code section 11055(b)(1)(M).

15 7. Respondent has subjected his license to discipline under Business and
16 Professions Code section 2761(a) on the grounds of unprofessional conduct as defined in section
17 2762(a) of that code in that, by his own admission, in or about August 1994, while on duty at
18 Regency Health Services, Tustin, California, he did the following:

19 a. He obtained Demerol and Morphine by fraud, deceit, misrepresentation, or
20 subterfuge in violation of Health and Safety Code section 11173(a) by diverting the controlled
21 substance from Regency Health Services' supply for his own personal use.

22 b. He possessed Demerol and Morphine in violation of Health and Safety Code
23 section 11350.

24 c. He self-administered Demerol and Morphine, without having lawful authority
25 therefor.

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